

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

-vs-

JOSE MILANES-SANCHEZ,
Defendant.

NO. CR-04-0044-WFN

ORDER

The Court received a Mandate from the Ninth Circuit Court of Appeals with a limited remand for further proceedings consistent with *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005). Mandate filed 01/09/06 (Ct. Rec. 34); Memorandum Opinion filed 01/09/06 (Ct. Rec. 35). This Court directed counsel to be appointed to represent the Defendant and set a briefing schedule for the parties to address the question of whether the 70 month sentence imposed in this case would have been materially different had the Court known the Sentencing Guidelines were advisory rather than mandatory. Order filed 01/11/06 (Ct. Rec. 40). The Court received briefing filed by the Government on January 19, 2006 (Ct. Rec. 41); defense counsel Kathleen Moran filed a Motion for New Sentencing Hearing in Light of Remand on January 31, 2006 (Ct. Rec. 43). In addition, United States Probation Officer Brenda Challinor presented a letter to the Court dated January 13, 2006 entitled Supplemental Information Pursuant to Remand.

For the reasons stated below, the Court answers the question posed by the Ninth Circuit's remand in the negative. There is no reasonable possibility that the sentence imposed

1 in this case would have been materially different had the Court known the Sentencing
2 Guidelines were advisory rather than mandatory.

3 I. BACKGROUND

4 The Defendant was indicted March 2, 2004 for being an alien in the United States after
5 deportation in violation of 8 U.S.C. § 1326. (Ct. Rec. 1). The Defendant plead guilty to the
6 indictment on July 7, 2004. (Ct. Recs. 17 & 18). The Defendant was sentenced on
7 September 27, 2004, to a low end sentence of 70 months incarceration. (Ct. Rec. 23). The
8 Court departed to a criminal history Category V based on a finding that the Category VI over-
9 represented the Defendant's criminal history. The sentence was imposed under the then
10 mandatory Guidelines.

11 II. DISCUSSION

12 In addressing the issue presented, the Court reviewed the file including the Judgment
13 (Ct. Rec. 23) and the Statement of Reasons; the briefing on the limited remand issue; the
14 Presentence Investigation Report [PSR], including the Guideline Sentencing calculations; the
15 statutory factors of 18 U.S.C. § 3553(a) as they pertain to this Defendant; and consulted with
16 United States Probation Officer Brenda Challinor. Based on the review of the above, the
17 Court **FINDS** as follows:

- 18 1. The United States Sentencing Guideline sentencing range in this case, after
19 the Court's departure to a criminal history V, is 70 to 87 months;
- 20 2. The Defendant has a significant criminal history which include two drug
21 trafficking crimes;
- 22 3. There is no significant evidence of a mitigating nature that overcomes the
23 effect of the Defendant's criminal history;
- 24 4. The 70 month sentence reflects the seriousness of the offense,
25 promotes respect for the law, provides just punishment, and affords adequate
26 deterrence;

s/ Wm. Fremming Nielsen
WM. FREMMING NIELSEN
SENIOR UNITED STATES DISTRICT JUDGE